

MANAGING WATER RESOURCES THROUGH
STATE NATURAL RESOURCES DISTRICTS

Presented by

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BACKGROUND:

A Natural Resources District (NRD) is a governmental entity somewhat unique in Nebraska. To briefly describe an NRD, it is a multi-purpose, local unit of government in Nebraska charged with most of the local soil and water resources management responsibilities of the state. It was created statutorily by the merger of five different types of previously existing special purpose districts.

As might be expected, creation of NRDs did not come about overnight. Interest was first expressed in limiting the number of resource related special purpose districts in the early 1960's. By the mid-1960's, over 500 such special purpose districts of 14 different types existed in Nebraska. These districts had overlapping and duplicate responsibilities; for example, 7 of the 14 types of districts had flood control responsibilities, 5 of the 14 possessed erosion control authorities, 8 of the 14 were authorized to undertake drainage improvements, 4 of the 14 had some responsibilities relating to recreation, and 6 of the 14 were authorized to provide water supply for one or more beneficial uses. The numbers of these districts were increasing each year, but yet, no entity had overall coordination authority or basin-wide planning responsibilities; and no entity was granted authorities to deal with some of the more complicated and more comprehensive resources problems. Interest in reducing the existing numbers of districts and in stopping the proliferation of yet additional districts increased. Largely through the efforts of individuals like

Warren Fairchild, then Executive Secretary of the Soil and Water Conservation Commission, and members of the State Association of Soil and Water Conservation Districts, a special study considering the consolidation of local resources entities was initiated in the late 1960's as part of the state water planning process. This study culminated in the introduction on April 1, 1969, of legislation to create Nebraska's NRDs.

This legislation was not met without opposition or confusion. As it was originally introduced, it provided for the NRDs to begin operation on January 1, 1971. By the end of the 1969 legislative session, a compromise was reached providing that the legislation would be passed but only if the operational date was delayed by one year until January 1, 1972, to allow the Legislature an additional legislative session to reconsider the concept and to repeal or modify the legislation adopted if deemed appropriate.

As passed in 1969, the original NRD Law provided for the merger of 6 of the 14 entities previously existing. Included were Soil and Water Conservation Districts, Watershed Conservancy Districts (sponsors of P.L. 566 projects), Mosquito Abatement Districts, and three different types of watershed boards, two of which were primarily advisory in nature. Additional types of districts were not included for a variety of reasons. Many, like irrigation districts and rural water districts, had large outstanding debt obligations while others, like some drainage districts, had large outstanding judgments brought about by damages caused by the works of improvement which they had sponsored. A decision was made to not include districts with such large financial obligations, as it was felt that those burdens would severely hinder the operation of the new districts.

Other types of districts were excluded initially because the opposition to their inclusion was too great and would have severely damaged, politically, the chances of the bill's passage. As originally passed, however, the

legislation provided that no additional drainage districts, rural water districts, or groundwater conservation districts could be formed after the NRDs began operation. It also provided that such districts, as well as irrigation districts and reclamation districts could be merged into NRDs after individual consideration of the merits of such a merger and the approval of both the merging district and the NRD. The prohibition against the creation of additional districts and the merger provisions have remained in the law to this date.

The 1969 bill directed the Soil and Water Conservation Commission, now the Natural Resources Commission, to establish the number of and the boundaries for the NRDs. Not less than 25 nor more than 50 districts were to be established, and their boundaries were to be based upon common problems needing resolution. After extensive study and considerable input, the Commission established the initial boundaries for 33 NRDs in the fall of 1970.

As it had promised, the Legislature held a number of hearings across the state in 1970 to receive public testimony regarding the creation of these districts. With the establishment in the fall of that year of the initial boundaries, considerable attention and opposition began to focus on those boundaries. One of the proposals offered during the 1971 legislative session was to abolish the boundaries established by the Commission and to create new boundaries by legislative action. After several frustrating weeks, the Legislature finally abandoned this effort, but did provide that the original boundaries be abolished and that the Commission be authorized to reestablish boundaries with new criteria. This time there were to be not less than 16 nor more than 28 NRDs. The criterion for boundary decisions was to conform as nearly as possible to the boundaries of the major river basins of the state to allow one more opportunity for

legislative oversight. Implementation of the districts was also delayed by an additional six months until July 1, 1972.

Work on the new boundaries was completed by the Commission in September of 1971. These new boundaries called for the establishment of 24 districts statewide ranging in size from 557 square miles to nearly 8,000 square miles. These boundaries have remained basically intact since their establishment and do closely approximate the boundaries of the major river basins of the state (see Figures 1 and 2). The population of these districts range from a low of approximately 6,000 to a high of over 500,000 (see Figure 3).

The boundaries established in 1971 met with less resistance than those previously established, but opposition to the NRD concept was still great in several areas. In 1972, concentrated efforts were made to effect a repeal in the law. Strangely enough, this proved to be of tremendous benefit to acceptance of the NRD concept. Senators were barraged with criticism of specific provisions of the law - criticisms which were not always valid. These efforts had the effect of encouraging senators to learn more about the legislation than they would otherwise have been inclined to do. As a result, some who had previously been opponents of the concept became strong supporters. The attempted repeal failed readily.

A number of legislative bills modifying the original legislation had also been introduced in 1971 and were carried over for consideration in 1972. Some of these bills would have significantly changed the concept of NRDs. Although most of the bills were eventually adopted by the Legislature, their final form did not, for the most part, make substantive changes in the concept. Bills which were adopted and did have considerable impact were those which lowered the maximum mill levy from 2 mills to 1 and which eliminated the authority to issue general obligation bonds.

The original legislation called for easing the transition from the

previously existing special purpose districts into the NRDs by providing for an interim board made up of all of the members of the merging boards. Concern was expressed in 1971 that such an interim board would have too little urban representation for a district with the variety of powers granted to NRDs; consequently, additional legislation passed in 1972 provided for the appointment of urban representatives on these interim boards. One additional action which was taken in 1972, was to eliminate from the merger the types of districts called Mosquito Abatement Districts.

Failing to succeed in their earlier efforts to repeal the legislation, some of those still opposed to the NRD concept brought suit challenging the constitutionality of the law - less than a month prior to the July 1, 1972, implementation date. An injunction prohibiting the merger was sought but not obtained, and the merger was allowed to take place on the date scheduled. Eventually resolved by the Nebraska Supreme Court some 1½ years later, this lawsuit resulted in a finding that the NRD law was valid in all respects.

Most of the districts which were merged had assets in some form as well as liabilities and obligations. These assets, liabilities and obligations were, by law, assumed by the NRDs on the date of implementation. In many cases, previous districts were divided by NRD boundaries; and in these instances, the property divisions had to be made. In the case of real property, the district in which that property was located, assumed its ownership, but was required to provide to the other district or districts containing a portion of the merged districts' land area a proportionate share of the value of that property.

Assumption of the assets was not met with favor in all parts of the state. Most were allowed to take place as the law provided, but a small number of districts scheduled to merge, created non-profit private associations immediately prior to the merger date. In these cases at

least some of the assets were transferred to these private associations to avoid transfer to the NRD. Although a few of these assets remain tied up in this manner, nearly all have since been transferred to the NRDs as had been directed by the original legislation.

At first, the future outlook for NRDs was not terribly bright as you might expect. Severe growing pains were experienced for some time. Most districts started without professional staff; several had extremely large interim boards to contend with; and there was still opposition in some areas to the concept - a factor which hindered successful operation.

CURRENT STATUS:

At the present time the outlook for districts is much brighter. The 24 districts created in 1972 still remain, and they are now governed by a board of directors elected at the General Election of the state. The election procedure is of a type somewhat unique, as directors are nominated by subdistrict and elected at-large. This election procedure has been approved generally by the U.S. Supreme Court, and specifically, by the Nebraska District Court in a suit challenging the NRD election laws. It allows for subdistricts of unequal population and provides for establishment of subdistrict areas in many districts on a problem-area basis.

In contrast with the original staffing limitations, all 24 districts now have full-time district managers and additional personnel depending on the complexity and the programs inherently and potentially within their responsibility. With a few exceptions, the managers are college graduates with degrees in resource related fields. Three of them have Master's Degrees. Three are Professional Engineers. Staff members include engineers, conservation planners, forestry and range specialists, technical aides, information specialists, and clerical help. The NRDs are required, by law,

to prepare a Master Plan for the district to be updated at least every ten years. In addition, the district must prepare and adopt a Long-Range Implementation Plan that will summarize planned district activities and include projections of financial, manpower and land rights needs of the district for at least the next five years and the specific needs assessment upon which the current budget is based.

Because of the difference in the total land areas and in their needs, there is a wide range in the budgets adopted for district operation. Total budgets for Fiscal Year 1980 ranged from a low of \$186,834 to a high of nearly \$4,000,000. The smallest amount of property taxes being raised is \$44,000 and the highest is \$1,000,000 (see Figure 3). On a statewide basis, district budgets this year total thirty-one million dollars with seven million of that generated by local property taxes.

AUTHORITIES AND ACTIVITIES:

NRDs are truly multi-purpose in nature with authorities ranging from drainage to recreation and fish and wildlife management. To carry out these responsibilities, the districts are granted a number of very important authorities as previously indicated. Each district is authorized to levy one mill annually upon all taxable property within the district. For certain types of projects with benefits to particular landowners, they are also authorized to establish use charges or to levy special assessments. Each district may purchase and hold all types of property and is granted the authority to utilize eminent domain when necessary. They are also authorized to contract with the federal government, with state agencies, and with local units of government and to issue revenue bonds upon the vote of two-thirds of the numbers of the governing board. Sinking funds may be established for future project activities, and water rights for both

storage and natural flow of waters may be obtained. In return for actions in accordance with the purposes of the NRD law, the districts may also furnish financial aid to individual landowners and to cooperating governmental entities.

These basic authorities are utilized by districts to carry out many different types of activities. A large number of the districts are engaged in some sort of structural flood control ranging from road structures to multi-million dollar reservoirs. At first, most of the flood control work being undertaken by NRDs was pursuant to the Public Law 566 - the Small Watershed Act. As their financial situations have improved over the years, many are now constructing flood control structures without significant assistance from either the state or federal governments.

The basic conservation practices promoted by Soil and Water Conservation Districts and many of the other merged districts are still heavily promoted, and districts are engaged in grass seeding, tree planting, and in providing technical assistance for conservation practices. To further basic conservation and to supplement the ACP and Great Plains Programs of the U.S.D.A., many now have their own financial assistance programs for these conservation practices. One district has a set-aside program paying landowners a specific per-acre amount to leave land idle during the summer months when application of conservation practices in Nebraska is often difficult because of competition by cropping practices. That particular district has provided nearly \$202,000 of its fiscal year 1980 budget for conservation assistance to landowners. A state program providing additional financial assistance has now been in operation approximately 18 months, and the NRDs are providing most of the administration for this program.

Several NRDs have also constructed and are managing recreational and parks facilities. Most also act as the local sponsor for a program financed

jointly with the State Game and Parks Commission. This program provides landowners with annual funds to set aside and to improve land for purposes of wildlife habitat. Seventy-five percent of the funds needed for the direct cost of this program are provided by the Game and Parks Commission with the remaining twenty-five percent provided by the NRDs.

Districts also are engaged in providing drainage assistance to landowners when needed. To the extent that this assistance provides direct benefits to those landowners, the costs are reimbursed by special assessment as previously discussed. A similar type of financing method is utilized when districts engage in supplying water for beneficial uses. One district is now operating a rural water system providing domestic water to individual farmers as well as to two small communities. Several other districts are now in the process of developing similar projects. At present, no district has yet implemented a project for supplying surface water for irrigation purposes; however, one district is presently in the process of attempting to obtain a water right for a project which will, if implemented, have a cost in excess of seventy million dollars. This project is extremely controversial in Nebraska as it will require the transbasin diversion of water from the Platte River Basin into the Little Blue River Basin. Attempts to obtain a water right for this project have been proceeding since early 1978, and the issue is presently pending before the Nebraska Supreme Court with a final decision expected in the near future.

In the future, the Natural Resources Districts in Nebraska will more and more be targeted to take a leadership role in mustering public support for actions determined to be in the best public interests. An example of this is recent action by the Governor of Nebraska with regard to a plan submitted to him by the Nebraska Natural Resources Commission. The Commission, having been given the responsibility to develop the P.L. 92-500

Section 208 Water Quality Management Plan for the state, completed an approved plan and submitted it to the Governor for evaluation and certification as a prerequisite for approval by the Environmental Protection Agency. The plan as submitted has several implementation responsibilities directed to NRDs. The NRDs were completely aware of and had concurred in the concept of their being the management entity on the local level for certain elements of the plan. The Governor, upon receipt of the plan, contacted each of the 24 NRDs by letter requesting them to specify which recommendations included in the 208 Plan that they would accept responsibility for. Commitment letters were requested. The plan has been certified, approved, and forwarded with no change as far as having the NRDs designated as the major management agency for a number of the recommendations.

GROUNDWATER MANAGEMENT RESPONSIBILITIES:

A responsibility which will demand an ever increasing commitment by the NRD is that relating to the management of Nebraska's groundwater resources. Some groundwater management provisions were included in the original legislation passed in 1969 and implemented in 1972. However, the responsibilities originally granted were deemed to be inadequate and were substantially enhanced in 1975 through the passage of the Nebraska Groundwater Management Act. This act provides NRDs with three basic responsibilities relating to the control of groundwater in the state. Each district is first charged with adopting and has adopted regulations to control the runoff of irrigation water derived from groundwater sources. For the most part, these regulations do not prevent all runoff but are directed at solving problems where they exist. Districts have now had considerable experience with these runoff controls, and their success in achieving compliance has been exceptional. The vast majority of irrigators contacted

have been very cooperative in controlling runoff voluntarily in a manner approved by the NRD.

Districts are also granted certain authorities regarding what are called illegal wells. These are wells which violate any state statutes or which violate regulations of the district. The statutes involved include a requirement for the registration of wells, spacing limitations, and the required installation of check valves on irrigation systems through which fertilizer or other hazardous chemicals are to be applied. Although many of these statutes have been in effect in Nebraska for several years and are accompanied by monetary penalties for violations, enforcement was virtually non-existent prior to the passage of the Groundwater Management Act. The districts are not granted the authority to impose these financial sanctions themselves but are authorized to issue cease and desist orders prohibiting the operation of any illegal well and to seek enforcement of those orders through the court. As has been true of the runoff regulations, the districts have had excellent success in achieving voluntary compliance through informal contact with owners of the wells determined to be illegal.

The most important aspects of the Groundwater Management Act are those related to the establishment and management of groundwater control areas. A control area is a specially designated area in which groundwater management controls may be imposed. This responsibility is an extremely significant one as Nebraska has in excess of 60,000 irrigation wells. As might be expected, several areas are experiencing declining water tables, and additional areas are expected to follow suit.

The establishment of a control area may be initiated only by a Natural Resources District. The designation itself is made by the State Department of Water Resources if it is found that there is an inadequate groundwater supply to meet present or reasonably foreseeable needs for beneficial use

of that water supply or that dewatering is causing quality problems. Consideration has been given to broadening this criterion to allow for the creation of groundwater control areas if groundwater development is affecting stream flows and to expanding the types of quality problems which can be considered.

If a control area is established by the Director of the Department of Water Resources, it becomes incumbent on the Natural Resources District or Districts involved to establish a management system for the area. The discretion as to the type of control to be imposed rests with the NRDs and includes the ability to establish allocation and rotation systems and to enact well spacing limitations more restrictive than those found in Nebraska statutes. If the problems of the area are severe, the districts are also authorized to prohibit new wells.

Enforcement of control area regulations is undertaken in essentially the same manner as in that for violation of runoff regulations or for operation of illegal wells. Districts are authorized to issue cease and desist orders and to seek enforcement of those orders in the Nebraska courts. To assist it financially in carrying out these control area responsibilities, a district is authorized an additional tax levy of one-fourth of one mill within the control area.

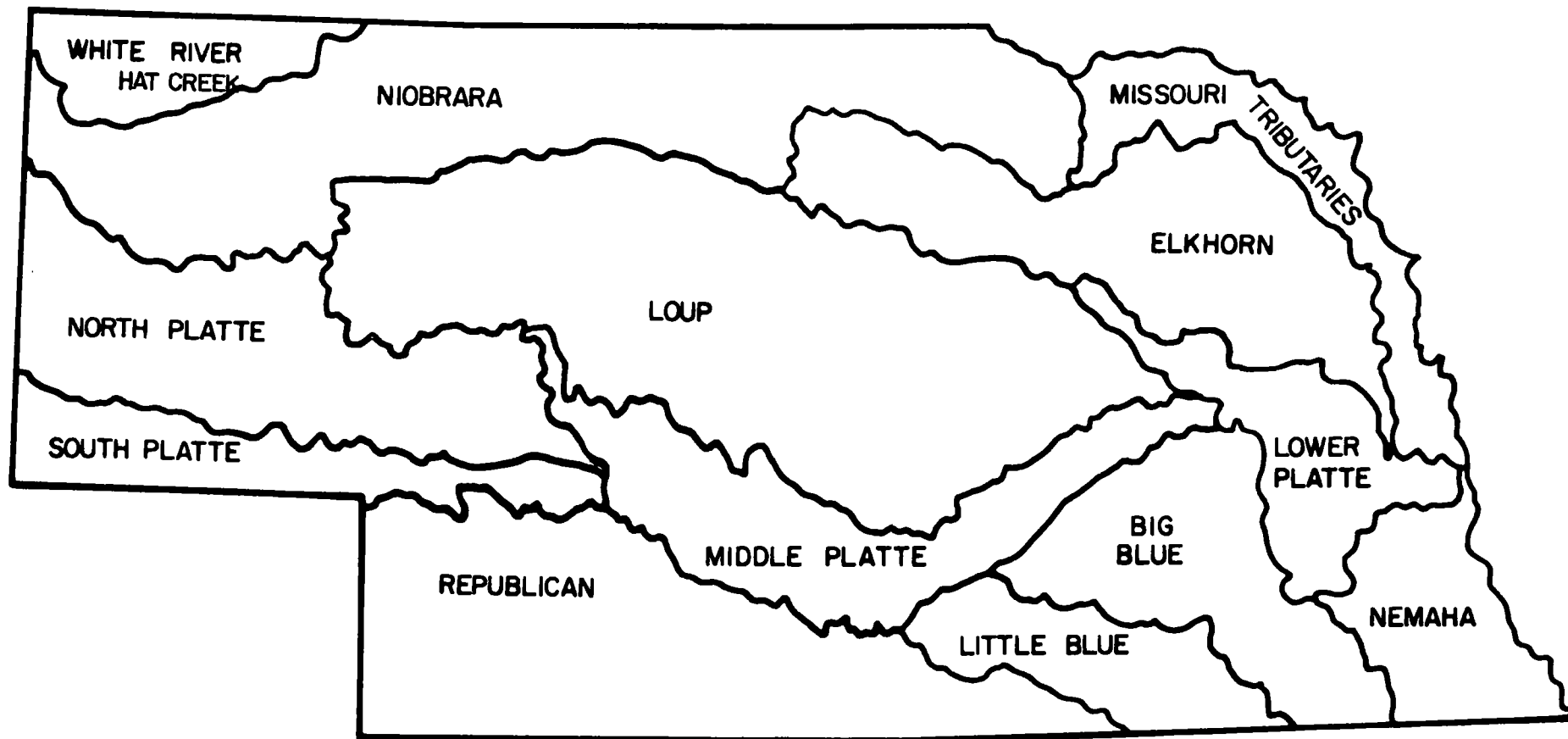
In the three years since it was adopted, there has been considerable activity pursuant to the Groundwater Management Act. Districts have made six requests for the establishment of control areas. Of these six requests, three have been established; two have been denied; and a decision is still pending on the most recent request. Of the three control areas which have been established, rules and regulations have been adopted in two. These regulations provide gradual implementation of the controls. In both districts with regulations, present emphasis is being placed upon

installation of meters on all wells exceeding a capacity of 100 gallons per minute and upon the allocation of water. In one control area, containing about 3,000 wells, the rate of water level decline has been quite severe in some portions of this area. In these portions, the district has established critical townships in which new, large capacity wells must be spaced at least 3300 feet from any existing well. This particular spacing limitation prohibits the total development of the area and provides basically for wells on diagonal quarter sections in a checkerboard fashion.

The second control area established contains roughly 10,000 wells, and opposition to enforced management has been greater than in the other example. Opposition has been particularly strong to the required installation of flow meters with many individuals equating meters with a water withdrawal tax - something which is not presently authorized by Nebraska Law. However, this district is proceeding on schedule, and a shift in public attitude toward recognition of the need for management is noticeable.

CONCLUSIONS:

Still in their infancy stage, NRDs remain a virtually untapped resource for the future management of Nebraska's soil and water resources. No one professes them to be the answer to all of Nebraska's water and related resources problems. But, they do represent a giant step forward for resolving many of those problems. One of the strongest assets of the districts is that they have the capability to think and act independently. As a consequence, they are dominated by neither state or federal agencies. This independence often makes the bureaucrats' mission more difficult to achieve, but the extra effort required normally improves the quality of the work product. The NRD concept was a big gamble in Nebraska. Most Nebraskans would agree that the gamble has paid off very handsomely.



Nebraska's 13 River Basins—————

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NEBRASKA'S NATURAL RESOURCES DISTRICTS

<u>BASIN</u>	<u>LAND AREA</u> <u>(sq. miles)</u>	<u>POPULATION</u> <u>(1970 census)</u>	<u>NUMBER OF</u> <u>DIRECTORS</u>	<u>TAXING</u> <u>CAPABILITY*</u>	<u>TOTAL FY 80</u> <u>BUDGET</u>	<u>FY 80</u> <u>TAX LEVY</u>
<u>Big Blue Basin</u>						
Upper Big Blue NRD	2,856	54,403	17	656,973	2,723,711	.6300
Lower Big Blue NRD	1,647	41,237	13	320,672	1,385,223	.7900
<u>Elkhorn Basin</u>						
Upper Elkhorn NRD	3.097	22,632	15	202,846	283,294	.4063
Lower Elkhorn NRD	4,059	91,473	19	738,995	2,465,942	1.0000
<u>Little Blue Basin</u>						
Little Blue NRD	2,406	56,162	17	521,107	883,575	.6100
<u>Loup Basin</u>						
Upper Loup NRD	5,157	6,352	11	77,188	186,834	.5729
Lower Loup NRD	7,932	73,828	21	687,065	1,512,708	.3740
<u>Missouri Tribs Basin</u>						
Lewis & Clark NRD	1,467	21,224	17	141,830	317,000	.7100
Middle Missouri NRD	757	21,599	11	161,532	383,350	.5900
Papio NRD	956	468,965	21	2,699,589	3,973,762	.3800
<u>Nemaha Basin</u>						
Nemaha NRD	2,418	49,376	21	371,364	1,396,763	.7200
<u>Niobrara Basin</u>						
Upper Niobrara-White NRD	6,528	28,431	11	246,282	437,910	.5900
Middle Niobrara NRD	4,602	9,728	9	160,971	298,953	.92
Lower Niobrara NRD	2,656	9,722	17	95,689	227,864	.4600
<u>Platte Basin</u>						
North Platte NRD	4,552	46,951	13	348,310	841,393	.6750
South Platte NRD	2,574	19,504	13	123,000	1,509,780	1.0000
Twin Platte NRD	4,157	37,648	15	373,564	412,620	.6000
Central Platte NRD	3,221	103,316	21	935,003	3,260,481	.6610
Lower Platte No. NRD	1,559	57,747	21	425,613	3,850,843	1.0000
Lower Platte So. NRD	1,647	190,377	21	1,401,467	2,939,027	.61475
<u>Republican Basin</u>						
Upper Republican NRD	2,697	10,478	11	174,507	315,410	.5100
Middle Republican NRD	3,763	22,608	11	283,057	1,007,775	.6300
Lower Republican NRD	2,465	23,134	11	267,487	374,350	.6000
<u>Tri-Basin</u>						
Tri-Basin NRD	1,519	18,438	13	292,298	265,806	.3300

*Utilizing 1980 valuations, the amount which each District is capable of raising annually with ad valorem tax levy of 1 mill.